

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARVIN HARRIS,)	No. C 04-1478 SBA (pr)
Petitioner,)	
v.)	<u>ORDER DENYING MOTION</u>
MENDOZA POWERS, Warden,)	<u>TO RULE ON HABEAS</u>
Respondent.)	<u>PETITION AS PREMATURE</u>
)	(Docket No. 15)

Petitioner Marvin Harris, a State prisoner incarcerated at Avenal State Prison in Avenal, California, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In an Order dated May 7, 2004, the Court granted Petitioner's application for in forma pauperis status and dismissed the petition with leave to amend (docket no. 6). On June 4, 2004, Petitioner filed a timely amended petition (docket no. 7).

The Court issued an Order to Show Cause and directed Respondent to file an answer or a motion to dismiss on procedural grounds in lieu of an answer. See July 25, 2005 Order at 3. On September 26, 2005, Respondent filed a motion to dismiss (docket no. 18). Petitioner filed an opposition (docket no. 21), and Respondent filed a reply (docket no. 22).

Petitioner has now filed a document entitled "Motion: Ex Parte Motion and Brief in Support Thereof" (docket no. 15). In this motion, Petitioner claims that he has been incarcerated for more than twenty-one years, and that his habeas petition includes an allegation that "the Board of Prison Terms and the Department of Corrections are both working in a capacity of illegalities [including] false detention of said [Petitioner]." Pet'r Ex Parte Mot. at 2. Petitioner also claims that "his medical records clearly show his handicaps."¹ Id. at 2. He requests that "an [sic] court order be issued to the United States Marshal's Department for the reasons of rescuing a person from prison

¹ Petitioner's attached "medical records" include documents and diagrams on the automatic nervous system, the skeletal system, the spinal nerve distribution, and the effects of spinal misalignments. The Court notes that Petitioner has not attached any of his own medical records indicating the exact nature of his "handicaps" or medical problems.


1 and to deliver said person either to Your Honorable District Court or the Superior Courthouse,
2 Oakland, California." Id. at 5.

3 The Court construes the instant ex parte motion as a motion for the Court to rule on his
4 petition for a writ of habeas corpus. Before the Court can consider the merits of the petition, the
5 Court must first rule on Respondent's motion to dismiss. Furthermore, even if the motion to dismiss
6 is denied, the Court will not be able to review the petition on the merits until Respondent files an
7 answer to the Court's Order to Show Cause and Petitioner files a traverse. Therefore, the motion for
8 the Court to rule on this petition is hereby DENIED as premature.

9 This Order terminates Docket No. 15.

10 IT IS SO ORDERED.

11 DATED: February 16, 2006

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13 SAUNDRA BROWN ARMSTRONG
14 United States District Judge
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